

## Federal Acquisition Regulation

## 22.404-5

in Department of Labor All Agency Memoranda Numbers 130 and 131.

[53 FR 4935, Feb. 18, 1988, as amended at 66 FR 53480, Oct. 22, 2001]

### **22.404-3 Procedures for requesting wage determinations.**

(a) *Requests for general wage determinations.* If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor. When necessary, a request for a general wage determination may be made by submitting Standard Form (SF) 308, Request for Determination and Response to Request, to the Administrator, Wage and Hour Division, attention: Branch of Construction Contract Wage Determinations.

(b) *Requests for project wage determinations.* A contracting agency shall submit requests for project wage determinations on SF 308 to the Department of Labor. The requests shall include the following information:

(1) The location, including the county (or other civil subdivision) and State in which the proposed project is located.

(2) The name of the project and a sufficiently detailed description of the work to indicate the types of construction involved (e.g., building, heavy, highway, residential, or other type).

(3) Any available pertinent wage payment information, unless wage patterns in the area are clearly established.

(4) The estimated cost of each project.

(5) All the classifications of laborers and mechanics likely to be employed.

(c) *Time for submission of requests.* The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

(d) *Review of wage determinations.* Immediately upon receipt, the contracting agency shall examine the

wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

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### **22.404-4 Solicitations issued without wage determinations.**

(a) If a solicitation is issued before the wage determination is obtained, a notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.

(b) In sealed bidding, bids may not be opened until a reasonable time after the wage determination has been furnished to all bidders.

(c) In negotiated acquisitions, the contracting officer may open proposals and conduct negotiations before obtaining the wage determination. However, the contracting officer shall incorporate the wage determination into the solicitation before submission of best and final offers.

### **22.404-5 Expiration of project wage determinations.**

(a) The contracting officer shall make every effort to ensure that contract award is made before expiration of the project wage determination included in the solicitation.

(b) The following procedure applies when contracting by sealed bidding:

(1) If a project wage determination expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. If necessary, the contracting officer shall postpone the bid opening date to allow a reasonable time to obtain the determination, amend the solicitation to incorporate the new determination, and permit bidders to amend their bids. If the new determination does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If a project wage determination expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. The request for extension shall be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. If necessary, the contracting officer shall delay award to permit either receipt of the extension or receipt and processing of a new determination. If the request is granted, the contracting officer shall award the contract and modify it to apply the extended expiration date to the already incorporated project wage determination. (See 43.103(b)(1).) If the request is denied, the Administrator will proceed to issue a new project wage determination. Upon receipt, the contracting officer shall process the new determination as follows:

(i) If the new determination changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404-1. Otherwise the contracting officer shall award the contract and incorporate the new determination to be effective on the date of contract award. The contracting officer shall equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.

(ii) If the new determination does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) The following procedure applies when contracting by negotiation:

(1) If a project wage determination will or does expire before contract award, the contracting officer shall request a new wage determination from the Department of Labor. If necessary, the contracting officer shall delay award while the new determination is obtained and processed.

(2) The contracting officer need not delay opening and reviewing proposals

or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire before receipt and full processing of the new determination.

(3) If the new determination changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet occurred, or to all offerors that submitted proposals if the closing date has passed. All offerors to whom wage rate information has been furnished shall be given reasonable opportunity to amend their proposals.

(4) If the new determination does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

#### **22.404-6 Modifications of wage determinations.**

(a) *General.* (1) The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by re-issuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination in a solicitation is determined by the publication date of the notice in the FEDERAL REGISTER, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs